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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

NOTIFICATION

New Delhi, the 3rd October 1970

S.O. 3272.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the National Industrial Tribunal, New Delhi in the industrial dispute between the employers in relation to the Life Insurance Corporation of India and their workmen, which was received by the Central Government on the 28th September, 1970.

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL, NEW DELHI

REFERENCE No. NIT-1 OF 1969

REFERENCE No. NIT-2 OF 1969

In the matter of industrial dispute between the Life Insurance Corporation of India, "Yogakshema", Madame Cama Road, Bombay, and their workmen as represented by:—

(1) All India Insurance Employees' Association, Calcutta.
(2) All India National Life Insurance Employees' Federation, Bombay.
(3) All India Life Insurance Employees' Association, Calcutta.
(4) L.I.C. Higher Grade Assistants' Association, Calcutta.

AND

In the matter of (1) application No. Misc./NIT/27/70 dated the 22nd June, 1970 filed by the All India L.I.C. Stenographers' Association, (2) application No. Misc./

NIT/30/70 filed on the 26th June, 1970 by ten Stenographers, (3) thirty-three applications Nos. Misc./NIT/40, 41, 42, 43, 44 45 46 48 49 50 51 52 53 55 56 57 58 59 60 61 62 63 65 66 67 69 70 71 72 73 74 75 and 76 of 1970 of Stenographers, (4) application No. Misc./NIT/39/70 dated the 14th July, 1970 filed by All India Insurance Employees' Association and (5) application No. Misc./NIT/64/70 dated the 20th August, 1970 filed by All India Life Insurance Employees' Association.

PRESENT:

The Hon'ble Shri D. S. Dave, retired Chief Justice, Rajasthan High Court, Presiding Officer.

APPEARANCES:

For the employer:—

Shri N. V. Phadke, Advocate, with Shri Anant Waman Dharwadkar, Assistant Secretary (Personnel), Life Insurance Corporation of India.

For the Workmen:—

Shri M. K. Ramamurthi, Advocate, with Shri S. N. Bhowmik and Shri T. R. Chouhan on behalf of All India Insurance Employees' Association.

Shri V. C. Gopalkrishnan, with Shri N. Chakravorty and Shri Joginder Singh on behalf of All India National Life Insurance Employees' Federation.

Shri P. K. Bose, with Shri Sohan Lal and Shri N. K. Joshi on behalf of All India Life Insurance Employees' Association.

Shri L. N. Trikha, with Shri A. N. Kapur on behalf of L.I.C. Higher Grade Assistants' Association.

For the Petitioners in Applications Nos. Misc./NIT/27, 30, 40 to 46, 48 to 53, 55 to 63 65 to 67 and 69 to 76 of 1970: Shri P. S. Khera, Advocate, with Shri S. R. Iyer and Shri K. L. Chawla.

For the Petitioners in Application No. Misc./NIT/39/70: Shri M. K. Ramamurthi, Advocate, with Shri S. N. Bhowmik.

For the petitioners in Application No. Misc./NIT/64/70: Shri P. K. Bose.

AWARD

Certain industrial disputes having arisen between the management of the Life Insurance Corporation of India (hereinafter referred to as 'the Corporation'), and their workmen (Class III and Class IV employees), two References were made by the Central Government by Notifications No. S.O. 4299, dated the 28th November, 1968 and No. S.O. 3447, dated the 22nd August, 1969, and they were registered in this Tribunal as References No. NIT-1 of 1969 and No. NIT-2 of 1969 respectively. The parties to both the References arrived at a mutual settlement on the 20th June, 1970 and two Memorandums of Settlement were presented by them before the Tribunal. Both the References were consolidated and a consent award in terms of the said settlements was given by this Tribunal on the 13th July, 1970. It has been published in the Gazette of India Extraordinary Part II, Section 3, Sub-section (ii), dated the 22nd July, 1970. All the relevant facts relating to the disputes ending with the settlements have already been stated in the said Award and need not be repeated again. This Award may be read in continuation of the earlier one dated the 13th July, 1970, referred above.

All the Class III and Class IV employees of the Corporation excepting the Stenographers are covered by the said Award. The Stenographers including those who are in the scale of Higher Grade Assistants were excluded from the operation of that Award according to the orders of the Delhi High Court dated the 26th June, 1970 and 2nd July, 1970.

On the 22nd June, 1970 an application was presented on behalf of the All India L.I.C. Stenographers' Association (hereinafter referred to as 'AILICSA'), by its President praying that the Tribunal should not pass any award against them in terms of the settlements dated the 20th June, 1970, that the AILICSA should be permitted to put up its case independently on merits, and that time may be allowed to it to file its statement of claim. This application was registered as No. Misc./NIT/27/70.

On the 26th June, 1970, ten Stenographers presented another application, which has been registered as No. Misc./NIT/30/70. It was submitted by them in respect of Reference No. NIT-1 of 1969 that they were not aware of the terms on the basis of which the matters in dispute covered by the Reference insofar as the Stenographers were concerned were settled and, therefore, it was prayed that they may be permitted to file their objections to the settlements and be further permitted to file fresh statement of claims in respect of the disputes covered by the Reference.

On the 14th July, 1970, an application was filed on behalf of the All India Insurance Employees' Association (hereinafter referred to as 'AIIEA'), by its General Secretary saying that the writ application of the Stenographers came for hearing before the Division Bench of the Delhi High Court and that the Hon'ble High Court was pleased to pass an order on that day whereby it had vacated its earlier order restraining the Tribunal from giving its Award in respect of the Stenographers till July 15, 1970. It was prayed by the petitioner that in view of the subsequent order of the High Court dated the 14th July, 1970, referred above, this Tribunal should pass its award in terms of the settlements in respect of the Stenographers as well, and that the applications of the Stenographers may be disposed of accordingly.

On the 18th July, 1970 a certified copy of the said Order of the Delhi High Court dated the 14th July, 1970 was received and it ran as follows:—

> "The petition above mentioned (Civil Miscellaneous No. 1167-W/70) came up for hearing before this Court on the 14th day of July, 1970. UPON perusing the said petition and hearing counsel for the parties This Court Doth Order *that the Tribunal may in the meanwhile give the award but it shall not be implemented in respect of Stenographers till the decision of the writ petition and this Court both further order that This would not prevent respondent No. 1 from giving the benefit of the award to those Stenographers who make an application in writing for this purpose to respondent No. 1.*
>
> And this Court Doth Lastly Order that this Order be punctually observed, obeyed and carried into execution by all concerned."

Thereafter, 11 applications signed by a number of Stenographers in the Central Office, Bombay and the Divisional/Branch Offices, Ahmedabad, Rajkot, Udipi, Jullundur, Bangalore, Coimbatore, Bhavnagar, Varanasi, Ajmer and Trivandrum were received and they have been registered as applications Nos. Misc./NIT/40, 41, 42, 43, 44, 45, 46, 48 49 50 and 51 of 1970. All these 11 applications are in identical language. It appears that after one application was drafted, cyclostyled copies were prepared and sent to Stenographers posted at different places. They were signed by the Stenographers and sent to the Tribunal by post.

All these applications were taken up on the 17th August, 1970 in the presence of the parties.

On that date, it was urged by learned Counsel for the AIIEA that the applications filed by the AILICSA and other Stenographers were not maintainable. This argument was also supported by learned Counsel for the Corporation and by the representatives of All India Life Insurance Employees' Association (hereinafter referred to as 'AILIEA') and the L.I.C. Higher Grade Assistants' Association (hereinafter referred to as 'the LIC HGAA'). The representatives of the All India National Life Insurance Employees' Federation (hereinafter referred to as 'the AINLIEF'), adopted a neutral attitude and left it to the Tribunal to hear or not to hear the said applications.

Shri P. S. Khera, learned Counsel for the AILICSA as also for the Stenographers who had filed applications Nos. Misc./NIT/30 and 40 to 51 of 1970 (not including No. 47), submitted on that day that the preliminary objection raised on behalf of the Corporation, AIIEA, AILIEA and LIC HGAA and the applications of his clients on merits may be decided together. In applications Nos. Misc./NIT/27/70 and Misc./NIT/30/70 it was not clarified as to what the AILICSA or the ten

Stenographers wanted to say on the merits of their case. Their only prayer in those applications was to permit them to file their written statements. Their learned Counsel, after obatining instructions from his clients, submitted on the 17th August, 1970 that his clients wanted to confine their arguments on merits, only to those averments which were contained in the 11 applications Nos. Misc./NIT/40 to 51 of 1970 (not including No. 47). The representatives of the Corporation and the representatives of AIIEA, AILIEA, AINIEF and LIC HGAA were thereafter directed to file their replies to the said applications by the 27th August 1970 and to give copies of the replies to the learned Counsel for the AILICSA and Stenographers. By agreement of all the parties 31st August and 1st September, 1970 were fixed for hearing of these applications.

Meanwhile, 22 more applications from Stenographers posted at various other offices of the Corporation were received. They are verbatim copies of the 11 applications referred above. They are registered as applications Nos. Misc./NIT/52; 53; 55; 56; 57; 58. 59, 59, 60, 61, 62, 63, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75 and 76 of 1970. The total number of signatories to these applications and the eleven applications received earlier is 337. They have all stated that at the time when the statements of claims were filed before the Tribunal by the four Unions, they were members of the AILICSA and were not members of any other union. They have further stated that they still continue to be members of he AILICSA. Thus, it is the AILICSA which is representing all these applicants.

One application dated the 20th August, 1970, was presented on behalf of AILIEA. It has been registered as No. Misc./NIT/64/70. In that application it was stated that a large number of applications in pursuance of the Delhi High Court's revised order dated the 14th July, 1970 were made by Stenographers all over India and that indicates their eagerness to take the benefit of the revised wages as given in the settlements of the 20th June 1970. It was alleged that disposal of such applications was being unnecessarily delayed by the Corporation and the Stenographers felt much aggrieved on that account. It was prayed that the Tribunal may grant an interim relief to such Stenographers. This application was also listed for hearing on the 31st August, 1970. The General Secretary of AILIEA, who appeared on that day, referred to this application, but when it was realised that the case was going to be finally decided, the prayer for interim relief was not pressed and thus, this application has become infructuous.

The case put forward by the AILICSA is, that they had put in one application on the 15th January, 1969 before the Tribunal at Calcutta and another application dated the 22nd February, 1969 also before that Tribunal praying that it may be impleaded as a party to Reference No. NIT-1 of 1969, but those applications were opposed by the Corporation. AIIEA, AILIEA and the AINLIEF, and, therefore, both the applications were dismissed on the 15th April, 1969. It is pointed out that although these applications were dismissed, it was conceded by the representatives of the Corporation and the other parties, that at the stage when the pay-scale of Stenographers is considered, the representative of the AILICSA may be heard, if it is felt .by it that its interests are not properly watched by the three Associations on record. It was in that context that the President of the AILICSA also conceded that it need not be impleaded and shown as a separate party and that the Association would be satisfied if its representative is heard by the Tribunal when the pay-scale of Stenographers comes for consideration.

It is next pointed out that on the 15th May, 1970 the AILICSA presented another application before the Tribunal saying that bipartite negotiations between various Associations representing the employees and the management of the Corporation were in progress at Bombay for some time, that they had come to know that an agreement between the Associations and the management was in the offing and that the management was giving to the Stenographers, the grade and Special Pay which were not in conformity with their demands and, therefore, it was prayed that the Association would like their case to be argued out before the Tribunal. It is contended that although this application was dismissed on the 22nd May, 1970, as the negotiations between the management and the Associations had failed and the application had become infructuous at that stage, it was noted by the Tribunal while dismissing the application that the Association will be heard according to the previous order dated the 15th April, 1969 in case it will be felt by it that its interests were not properly watched by the three Associations. On the basis of these two orders dated the 15th April, 1969 and the 22nd May, 1970, it is urged by the learned Counsel for AILICSA that his clients' case should be heard on merits by the Tribunal. According to the learned Counsel,

the two agreements dated the 20th June, 1970 were not binding on his clients as they were not parties to those agreements, and, therefore, the Tribunal should not give its award in respect of them in terms of the said agreements. He has referred to the provisions of section 18(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), and argued that a settlement arrived at by an agreement between an employer and workmen otherwise than in conciliation proceedings is binding only on the parties to the agreement and since the said settlements were arrived at, *de hors* conciliation proceedings, his clients could not be bound by them. In support of his arguments he has referred to certain cases which will be discussed at the appropriate stage later on

On merits, the case put forward by the AILICSA and its above-noted members is, that after nationalisation of life insurance business, the Corporation introduced the following pay-scales for its employees by its order dated the 24th December, 1956:—

Assistants	Rs. 90—300	18 years
Stenographers	Rs. 90—300	18 years
Clerks (including typists and steno-typists)	Rs. 55—220 (Rs. 25 additional special pay for steno-typists)	23 years

The above pay-scales were revised with retrospective effect from 1st September, 1956 by the Governmnt of India Order No. 53(1)Ins.(1)(5), dated the 1st June, 1957, as under:—

Higher Grade Assistants (Previously designated as Assistants)	Rs. 140—410	21 years
Stenographers	Rs. 90—300	18 years
Assistants, Typists (Previously designated as Clerks)	Rs. 75—300	25 years

The petitioners' [illegible] although by the said Order, which is popularly known as the 'Standardization Order', the Assistants were redesignated as Higher Grade Assistants and their pay-scale was revised from Rs. 90—300 to Rs 140—410 and the grade of Clerks including Typists, was also raised from Rs. 55—220 to Rs. 75—300 and they were given a better designation of Assistants, the pay-scales of Stenographers was not revised and it was left as before at Rs 90—300 only. The petitioners proceed to say that in January 1963 there was a bipartite compromise settlement between the Corporation and the two Unions, namely AIIEA and AILIEA and by that settlement the Stenographers' pay-scales was revised from Rs. 90—300 to Rs. 145—370, but the injustice done to the Stenographers by the Standardization Order dated the 1st June, 1957 was allowed to continue. At the time of arguments, it was explained that by this injustice they meant to point out that they were not given the same scale which was given to the Higher Grade Assistants by this settlement. Then, coming to the settlements dated the 20th June, 1970, it is pointed out by the petitioners that although their pay-scale was revised from Rs. 145—370 to Rs. 196—545 they have not been granted the scale of Rs. 245—650 which has been given to the Higher Grade Assistants. It is also pointed out that the pay-scale of Assistant|Typist has been revised from Rs. 130—370 to Rs 170—500 and according to them they have received better benefits proportionately. Thus, the first grievance of these petitioners is about the pay-scale.

It is next averred that their previous span of scale was 18 years but by the settlement of 20th June, 1970, the span of scale has been increased from 18 to 20 years and this has put them to great disadvantage.

Thirdly, it is pointed out that while a Functional Allowance of Rs. 25 p.m. was granted to Typists in the new settlement, the Stenographers have been granted a Special Pay of Rs. 20 p.m. only. According to them, their Special Pay should have been fixed at Rs. 25 p.m.

Lastly, it is urged that while employees of all other categories who have reached the maximum in the old grade would be fitted in the maximum of the revised

grade one stage lower, in the case of the Stenographers who have reached the maximum of the old grade they would be fitted three stages lower from the maximum of the revised grade. It is contended that they are adversely affected by the fitting-in procedure as indicated in the fitting-in chart incorporated in the first Settlement of the 20th June, 1970 and the Stenographers who have reached the maximum of the old grade should also be fitted one stage lower from the maximum in the revised grade.

From the other side, it is contended by learned Counsel for the Corporation and learned Counsel for AIIEA whose arguments have been adopted and supported by the representatives of the AILIEA and LICHGAA also, that in view of the settlements arrived at between the parties on the 20th June, 1970, the orders of the Tribunal dated the 15th April, 1969 and 22nd May, 1970 are no longer of any avail to the AILICSA. It is urged that according to the said orders, the AILICSA could be permitted by the Tribunal to argue its case regarding the pay-scale, only if the Tribunal were called upon to determine the cases and give its award on merits. The parties to the References having at the settlements, the disputes had, in fact, come to an end and the Tribunal's only function was to give an award in terms of those agreements unless they were found to be invalid in law. It is contended that the AILICSA or its members had not made out any case to challenge the validity of the two agreements. On the contrary, the AILICSA itself wanted an award from the Tribunal in terms of the two agreements on all other terms of Reference except the pay-scale including the Special Pay as applicable to them. It is urged that their applications were not maintainable.

It is not disputed by them that according to section 18(1) of the Act an agreement *de hors* conciliation proceedings was binding only on the parties to the agreement. It is, however, urged that the contention of the AILICSA to the effect that they were not parties to the agreement is wholly incorrect. It is pointed out by them that the industrial disputes which were the subject of the two References were raised by AIIEA, AILIEA and the AINLIEF and it was on account of the Charter of Demands presented by them that the Refernces were made to the Tribunal. Then, it is pointed out that according to the version of the AILICSA itself, it was an affiliated unit of the AINLIEF which was a party to the proceedings before this Tribunal. It was because of the fact that the AILICSA was already represented by the AINLIEF that the Tribunal had dismissed its application to be impleaded as a separate party. The AINLIEF thus continued to represent the AILICSA till the final settlement and since both the agreements of 20th June, 1970 were signed by the AINLIEF, the AILICSA including its members who were represented by it, were bound by the said agreements and they could not resile from them.

It is also urged that the AILICSA alone did not represent all the Stenographers. On its own showing, it represents at the most 655 out of the total number of 781 Stenographers. The remaining Stenographers and certain members of the AILICSA also were represented by AIIEA and the AILIEA and they were certainly bound by the agreements which were signed by these two Associations. The Tribunal could not fix two scales for Stenographers that is, one for those who are represented by these two Associations and the other for those who are represented by the AILICSA and for this reason also, the applications of the AILICSA and the other Stenographers for hearing the case on merits are not maintainable.

Then, without conceding the stand taken by them about the maintainability of the applications filed by the AILICSA and the other Stenographers, it is urged that the case put forward by them on merits is wholly untenable. It is pointed out that the post of a Higher Grade Assistant was a promotion post to which the Stenographers were as much eligible as other employees who were categorised as Assistants. It is pointed out that some Stenographers were promoted to that scale only on the basis of their experience and the Stenographers so promoted continued to be called Stenographers in the scale of Higher Grade Assistants. According to them, there were about 98 or 100 such Stenographers already enjoying the scale of Higher Grade Assistants. Then there was an equal number of Stenographers who were promoted as Higher Grade Assistants because they had acquired requisite qualifications by passing the prescribed examinations. They were full-fledged Higher Grade Assistants and were doing technical work in different spheres.

It is pointed out that the AILICSA was wholly wrong in saying that all Assistants were promoted to the grade of Higher Grade Assistants after the Standardization Order was promulgated. Only those who could be promoted according to the promotion procedure, which was laid down for all employees, were promoted to that scale and, in that way, no exception was made in the case of Stenographers.

In other words, those Stenographers who were found fit for promotion were also promoted. It is urged that there was no justification for giving to the Stenographers the scale which was prescribed for the Higher Grade Assistants. It is pointed out that, in fact, the Stenographers were given the most generous treatment as their existing scale of Rs. 145—370 was raised to Rs. 196—545. It is next pointed out that the Stenographers were receiving a Special Pay of Rs. 10 p.m. so far and it was raised to Rs. 20 p.m. in the new agreement. Thus, the total difference in the scale of Stenographers between the minimum and the maximum (inclusive of Special Pay) was Rs. 61 and Rs. 185, which was the highest, in comparison with Higher Grade Assistants, Section Heads and Assistants in the revised scales as shown below:

Category	Basic Pay				Difference	
	Existing		Revised		at	at
	Min.	Max.	Min.	Max.	Min.	Max.
Higher Grade Assistants	190	480	245	650	55	170
Section Head .	160	410	210	585	50	175
Stenographers	155 (incl. sp. pay of Rs. 10)	380	216 (incl. sp. pay of Rs. 20)	565	61	185
Assistants . .	130	370	170	500	40	130

Regarding the Special Pay, it is contended that the Stenographers could not make any legitimate grievance simply because the Functional Allowance given to the Typists was raised from Rs. 15 p.m. to Rs. 25 p.m. in the new agreements. It is pointed out that the Typists were given a raise of Rs. 10 p.m. only and this Functional Allowance did not carry with it other benefits, that is, the Typists could not earn Dearness Allowance, Bonus or Gratuity on the Functional Allowance. It is stressed that the Stenographers were also given a raise of Rs. 10 p.m. in their Special Pay. It is pointed out that, in fact, the Special Pay of Rs. 20 was equivalent to Rs. 36 p.m. because it also carried benefit of Dearness Allowance to the extent of Rs. 12 and Rs. 4 for Bonus and Provident Fund and thus the Stenographers were actually given higher benefits in comparison to the Typists.

Regarding the grievance about the span of scale raised by the Stenographers, it is pointed out that it had to be increased from 18 to 20 years as the maximum of the scale was raised to Rs. 545. If with this revised maximum the span were retained at 18 years as before, the Stenographers would have earned higher annual increments than the Higher Grade Assistants. There could be no justification for giving higher annual increments in a lower scale in comparison to the higher scale.

About the last objection relating to the fitting-in procedure, it is pointed out that a uniform treatment was given to all the employees and there was no discrimination in the case of Stenographers. Since the span of the Stenographers' scale was raised from 18 to 20 years, those who had reached the maximum in the existing scale could only be placed three stages lower from the maximum of the revised grade. Thus, according to their arguments, there was no substance on merits also in the case put up by the AILICSA. It is prayed by them that an award may be given in respect of all the Stenographers in terms of the two agreements as has been done in the case of all other categories of Class III and Class IV employees of the Corporation.

The questions which arise for determination are:—

(1) Whether the Stenographers are bound by the two agreements dated the 20th June, 1970 arrived at between the Corporation and the AIIEA, AILIEA, AINLIEF and the LIC HGAA?

(2) whether the applications of the AILICSA and the other stenographers to be heard on the merits of the case are not maintainable?

(3) In case the above two points are decided in favour of AILICSA, whether the grievances about the Stenographers pay-scale, Special Pay, span of scale and fitting-in procedure are justified and, if so, what relief or reliefs they are entitled to?

The above points may be taken up *seriatim*.

Before commencing the discussion on the first point, it would be proper to reproduce here, section 18 and section 36(1) of the Act as also Rule 37 of the Industrial Disputes (Central) Rules, 1957. They run as follows:—

"*Section* 18

18. (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of concillation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, the Tribunal or National Tribunal which has become enforceable shall be binding on—

(b) all other parties summoned to appear in the proceedings as parties

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assignees in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

"*Section* 36(1)

(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of a registered trade union of which he is a member;

(b) an officer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by an officer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed."

"Rule 37

37. *Parties bound by acts of representative.*—A party appearing by a representative shall be bound by the acts of that representative."

It is obvious from the perusal of section 18(1) of the Act that if a settlement is arrived at by mutual agreement between the employer and the workmen otherwise than in the course of conciliation proceedings, it shall be binding only on the parties to the agreement. According to sub-section (3) of section 18, if a settlement is arrived at in the course of conciliation proceedings under the Act, it is binding on all the parties to the industrial dispute. Thus, a settlement arrived at by agreement between the employer and workmen *de hors* conciliation proceedings shall not be binding on parties other than those who are parties to the agreement. In the present case, the two settlements were arrived at by agreement between the Corporation on the one part and ALIEA, AINLIEF, AILIEA and LIC HGAA on the other side and, therefore, they would be binding on all those employees of the Corporation who were represented by these trade unions and Federations. It has already been held in the earlier Award that all Class III and Class IV employees of the Corporation except the Stenographers were bound by the agreements. An Award was not given in respect of the Stenographers because some of them had raised an objection that the settlement was not acceptable to them and just when their applications dated the 22nd

June, 1970 and 26th June, 1970 were taken up for hearing, they obtained a stay order in a writ application from the Delhi High Court. The question whether the Stenographers were bound by the said agreements was not determined in that Award in pursuance of the Orders of the Delhi High Court dated the 26th June, 1970 and the 2nd July, 1970. It may be noted here, that all the Stenographers have not come before the Tribunal to challenge the two agreements of the 20th June, 1970. The AIIEA and AILIEA have claimed that a large number of Stenographers were represented by them. The number of such employees is not certain but whatever the exact number of Stenographers represented by these two Associations may be, they would undoubtedly be bound by the said two agreements. No challenge has been thrown on their behalf and, therefore, an award will have to be given in respect of them in terms of the settlements. The question for determination really is, whether the Stenographers represented by AILICSA are bound by the said settlements or not. In the 33 applications filed by 337 Stenographers, it is contended that they were members of the AILICSA and of no other Association. By saying that they were not members of any other Association they can be taken to be correct only to the extent that they were not members of AIIEA, AILIEA and LIC HGAA. They have not specifically pleaded that they were not represented by AINLIEF and even if they had taken that ground, it could not have been allowed. It is not disputed by the AILICSA that it was affiliated to the AINLIEF. The argument put forward on behalf of the Corporation as also on behalf of the AIIEA, AINLIEF, AILIEA and LIC HGAA is, that the AILICSA was affiliated to the AINLIEF, that the AINLIEF continued to represent all the members of the AILICSA and since the AINLIEF was a party to the agreement, all the Stenographers who are members of the AILICSA were equally bound by the settlements. From the other side, the argument advanced on behalf of the AILICSA is, that although it was affiliated to the AINLIEF, its members were not bound by the settlements because it wanted to have its own say from the time it presented its application on the 15th January, 1969 and it was ordered by the Tribunal on the 15th April, 1969 that its representative will be heard when the pay-scale of Stenographers comes for consideration. We have, therefore, first to see as to what is the effect of the orders of the Tribunal dated the 15th April, 1969 and the 22nd May, 1970, in this behalf.

It is true that the AILICSA presented one application on the 15th January, 1969 before the National Tribunal at Calcutta to be impleaded as a party and another application dated the 22nd February, 1969 before that Tribunal to the same effect, but when these two applications were taken up on the 15th April, 1969, they were strongly opposed not only by the Corporation but also by the AIIEA, AILIEA and AINLIEF. In the reply which was filed by the Corporation, it was averred that the applicants represented only a negligible percentage of the total number of employees and that too only of a small section in a single category of workmen, that the three parties specified in the Reference represented all categories of Class III and Class IV employees including the Stenographers, that the AILICSA was itself affiliated to AINLIEF, that the members of AILICSA were thus already represented by AINLIEF, and there was no warrant for addition of a sectional representative as a separate party to the dispute. It was also averred that this would lead to multiplicity of proceedings and involve unnecessary delay in the adjudication of the demands of the workmen. In the reply filed by AIIEA also, it was submitted that AILICSA being an affiliated unit of AINLIEF, and the AINLIEF being a party to the proceedings, the members of AILICSA were fully represented by AINLIEF and there was no need to grant it a separate representation. It was also urged that if affiliated units of the federal associations are allowed to be parties to the proceedings separately, there would be multipulicity of representations, there would be large number of parties to represent various sections of employees and the whole proceedings will be delayed. This Association itself was a federation and, therefore, it had reasons to oppose the AILICSA's application because if the Stenographers application were allowed, the units of AIIEA might have also filed similar applications and then there would have been unnecessary delay and multiplicity of proceedings. Another objection raised by the AIIEA was that the Charter of Demands alleged to have been made by AILICSA on the management was, according to its own admission, never subject of conciliation proceedings and that it was never made a party to any conciliation proceedings. In other words, its contention was that the AILICSA could not be impleaded as a separate party independent of the AINLIEF which had espoused its cause and raised the industrial disputes referred to the Tribunal. In the face of this opposition, and the support given to these arguments by learned Counsel for AINLIEF, the President of the AILICSA, who appeared on the 15th April, 1969, conceded that the Association need not be impleaded and shown as a separate party. The President of the Association never took the stand that

the AINLIEF, which was already a party to the proceedings, was not its representative. It is true that the contending parties conceded on that day that at the stage when the pay-scale of Stenographers is to be considered, the representative of the AILICSA may be heard in case it is felt by the Association that its interests were not properly watched by the three Associations who are already parties before the Tribunal. But, it may be observed that this concession was made as a gesture of their good-will towards the Association or by way of, what may be called, *ex abundanti cautela,* to give an assurance to the members of AILICSA that the three Associations were alive to the Stenographers' interests and they will not be failing in their efforts to promote them, but, if the Association had anything further to say about their pay-scale, it may be heard. It may be added that even if the other Associations had not conceded in favour of the AILICSA that it may be heard about pay-scale of Stenographers at the stage of arguments, the applications of the AILICSA would have been dismissed firstly on the ground that it could not be impleaded as a separate party independent of the AINLIEF which had espoused its cause and raised the industrial dispute which led to the References before the Tribunal. The legal position in this behalf has already been discussed in the earlier Award and the same arguments need not be repeated. Secondly, AILICSA, was itself a representative which as a trade union could represent its members under section 36(1) (a). But when its members were already represented by AINLIEF under section 36(1) (b), there was no justification for a second representation. At any rate, AILICSA could not be impleaded as a separate party in the face of opposition from AINLIEF, so long as it continued to be affiliated to it.

It is further noteworthy that the concession referred above was only about the pay-scale of the Stenographers and not about other terms of reference. In the first Reference, revision of pay-scale was only one of the six items mentioned in the Schedule. In the Second Reference, there were 7 items, and, therefore, it cannot be said that on account of the said concession the capacity of the AINLIEF to function as a representative of the AILICSA ceased to exist. On the contrary, the AINLIEF continued to represent the AILICSA and its members and no objection was raised about its authority by the Association for about a year when the proceedings continued before the Tribunal. On the 15th May, 1970, the President of AILICSA presented an application before the Tribunal saying that bipartite negotiations between the various Associations representing the L.I.C. employees and the management were in progress in Bombay, that the AILICSA had watched those negotiations with profound concern, that an agreement was in the offing between the Associations and the management, that the scale and Special Pay proposed to be given to the Stenographers by that agreement were not in conformity with their original demand and, therefore, it was prayed that their case may be argued out before the Tribunal. This application came for hearing on the 22nd May, 1970. It was submitted on that day by all the parties that the negotiations had failed. The above application was presented only because of the negotiations which were proceeding earlier. The negotiations having failed, the References were again taken up by the Tribunal for hearing and, therefore, the application filed by the AILICSA on the basis of the negotiations which were going on earlier had become infructuous. That application was, therefore, dismissed. The Tribunal while dismissing the application made a remark that the President of the AILICSA may appear before the Tribunal and make his submissions about the grade of the Stenographers when the case comes for arguments, if, as observed in the order of the Tribunal dated the 15th April, 1969, it was felt by the AILICSA that its interests were not properly watched by the three Associations. If settlements dated the 20th June, 1970 were not made and the case had proceeded before the Tribunal and if it were required to determine both the References on merits, the AILICSA could come before the Tribunal in pursuance of this order and the earlier order dated the 15th April, 1969. That situation, however, did not arise because the parties again started negotiations and they arrived at the two settlements, which are reproduced in the earlier Award. It is noteworthy that even in the application dated the 15th May, 1970. It was reiterated by the AILICSA in the very first paragraph that "the Stenographers' Association is affiliated to All India National Life Insurance Employees' Federation (INTUC)". Thus, it was admitted in very clear language even by that time, that the AILICSA was only one of the affiliated units of the AINLIEF. It was never alleged that the authority of the AINLIEF to represent it was taken away.

Since the AILICSA continued to be represented by the AINLIEF and the AINLIEF arrived at the settlements as its representative, both the agreements are

binding on this Association and its members. The order of the Tribunal dated the 15th April, 1969 was one of dismissal of the application and the AILICSA was never treated as a separate party. The subsequent order of the 22nd May, 1970 was also one of dismissal of the application. So, as the AINLIEF continued to represent the members of the AILICSA, they were bound by the agreements signed by it.

It may be observed that if there were no reference before the Tribunal and the AINLIEF had entered into a settlement with the Corporation on behalf of the AILICSA, the latter would have been bound by it and none of its members would have been able to urge successfully that the settlements were not binding on them because of the provisions of section 18(1) of the Act. This position did not change because of the References before the Tribunal. Rather the provisions of Rule 37 of the Industrial Disputes (Central) Rules made the acts of the AINLIEF all the more binding on them. They cannot thus wriggle out of the settlements.

It was contended by learned Counsel for the AILICSA at the time of final arguments on the 31st August, 1970 that the AILICSA had disaffiliated itself from the AINLIEF before the AINLIEF's representative signed the agreements and that, therefore, the settlements were not binding on it.

It was vehemently urged by learned Counsel for the Corporation and also by the representatives of AIIEA, AILIEA and LIC HGAA that this argument should not be allowed to be raised because the question whether the AILICSA had disaffiliated itself from the AINLIEF before the settlements were signed and whether that disaffiliation was valid in law is a mixed question of law and fact, that this ground was never taken by the AILICSA in its application nor did it find any mention in any application of the Stenographers. In reply to this objection it was contended by learned Counsel for the AILICSA that in the proceedings of the 26th June, 1970 it was admitted by Shri Gopalkrishnan, appearing for the AINLIEF, that the AILICSA got itself disaffiliated from the AINLIEF on the 20th June, 1970 before the settlements were signed, that the letter regarding disaffiliation was received by the AINLIEF at 4 P.M. while the settlements were signed at about 6.30 P.M. or 7.00 P.M. It is argued that the fact of disaffiliation is already on record and, therefore, his clients have a right to raise this point. It may be observed that on the said date (26th June, 1970) the application of the AILICSA dated the 22nd June, 1970 was taken up. The representatives appearing for the other Associations were asserting that a large number of Stenographers were members of their Associations and, therefore, the Tribunal considered it proper to note down their versions in writing. It was submitted by the representative of the AIIEA that 40 per cent of the Stenographers were members of their Association. Similarly, it was submitted by Shri P. K. Bose on behalf of the AILIEA that 40 per cent of the Stenographers were members of their Association. When Shri Gopalkrishnan, appearing for the AINLIEF was also questioned, he stated that the AILICSA was affiliated to the AIELIEF at the time when the Statement of Claim was filed and at that time the membership of that Association was 655. At that stage, he volunteered a further statement to the effect that the AILICSA had got itself disaffiliated on the 20th June, 1970 about 2½ hours or 3 hours before the settlements were signed. Shri Chawla, Joint Secretary of the AILICSA also stated on that day that it was true that when the Statement of Claim was filed by the AINLIEF, the AILICSA was affiliated to it but their Association got itself disaffiliated from the AINLIEF on the 20th June, 1970. These facts were noted by the Tribunal but before it could proceed further, it was submitted by the President of the AILICSA that their Counsel had filed a writ before the Delhi High Court and got an interim stay order. The case was, therefore, adjourned by the Tribunal. Thus, it is true that Shri Gopalkrishnan and Shri Chawla both stated on that day that the AILICSA had got itself disaffiliated from the AINLIEF shortly before the settlements were signed, but neither the learned Counsel for the Corporation nor the representatives of the AIIEA, AILIEA or LIC HGAA were required to give their reply about this averment nor had they any occasion to cross-examine Shri Gopalkrishnan or Shri Chawla.

The learned Counsel for the Corporation, as also the representatives of AIIEA, AILIEA and LIC HGAA are correct in their stand that neither in the application of the AILICSA nor in any application of the Stenographers a ground was raised to the effect that the AILICSA was not bound by the settlements because it had got itself disaffiliated from the AINLIEF. It may be remarked that the AILICSA had not shown in its earlier applications as to what concrete case it wanted to put up before the Tribunal. Their only prayer was that the Tribunal

should withhold sanction to the settlements and the AILICSA should be allowed to plead its case independently on merits. When the matter came before the Tribunal on the 17th August, 1970 and this lacuna was pointed out, the submission which was made on their behalf was that they would confine their arguments to the avermenis which were made in the 11 applications of the Stenographers. It has to be remarked with regret that the AILICSA did not care to draft and file its own application giving the grounds on which the settlements dated the 20th June, 1970 were not considered to be binding on it. Only a copy of the application filed by the 11 Stenographers was given to the contending parties and since there was no allegation of disaffiliation in any of them, neither the Corporation nor the representatives of AIIEA, AILIEA and LIC HGAA had occasion to reply to it. The learned Counsel for the Stenographers has taken this fresh legal plea about disaffiliation at the time of final arguments to save his clients from the agreements and the contending parties are not unjustified in meeting it by a similar technical objection to the effect that a plea which is not found in the pleadings cannot be raised, specially when the AILICSA was assisted by a learned Counsel and such a ground could be taken in the applicatoin whose copies were given to the opposite parties on the 17th August, 1970

It was urged by the learned Counsel for AILICSA that it was a simple case of a principal revoking the authority of its agent. In reply it was contended by learned Counsel for the Corporation and AIIEA, AILIEA and LIC HGAA that the learned Counsel had over-simplified his contention. It was urged that AILICSA or any of its member had not even stated as to who had delivered the so called letter of disaffiliation and whether the person who delivered that letter or signed it had any authority to disaffiliate the AILICSA from the AINLIEF. Further, it could not be said without that document on record whether it was just a threat of disaffiliation to impress upon the AINLIEF that it should continue its efforts vigorously or it was for disaffiliation altogether. It was further urged that the question of disaffiliation could not be decided without looking into the constitution of the AILICSA and also that of the AINLIEF. It was lastly contended that, at any rate, neither the Corporation nor other parties were informed before the agreements were signed that the AILICSA had disaffiliated itself from the AINLIEF, that the AINLIEF was not competent to enter into an agreement on behalf of the AILICSA, and, therefore, the secret revocation of AINLIEF's authority (if any) could not affect the agreements.

It may be observed that the Corporation and representatives of AIIEA and AILIEA are correct in saying that no care was taken to place on record the letter relating to disaffiliation (if there was any) which is said to have been given by the AILICSA to the AINLIEF on the 20th June, 1970. It was admitted by the representative of the AINLIEF at the time of arguments before the Tribunal, that neither the Corporation nor other Associations were informed by them about this letter before the agreements were sighed. AILICSA also did not inform the Corporation or AILIEA or AIIEA about the so called disaffiliation before the agreements were signed. The AINLIEF appears to have taken no notice of this alleged disaffiliation and it proceeded to sign the two agreements. Whether there was actual disaffiliation or only a threat of disaffiliation cannot be determined without seeing the document itself. Similarly, it cannot be determinod whether there was a valid disaffiliation according to law, without looking into the constitutions of the AILICSA and the AINLIEF, which have not been placed on record. Since the ground of disaffiliation was never raised in any application and it cannot be determined by the Tribunal without any material on record, it cannot be allowed.

Moreover, it is a well-established principle of the law of agency that if a person employs another as an agent in a character which involves a particular authority, he cannot divest him of that authority secretly from third parties and if an agent in such a situation has done or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations. The AILICSA did not care to inform the Corporation and the other Associations that it has revoked the authority of the AINLIEF to enter into an agreement and, the Corporation believed that the AINLIEF continued to be the representative of the AILICSA in fact and in law by the time it signed both the settlements The AILICSA is, therefore, bound by that agreement. There is thus no force in this argument also of the learned Counsel for AILICSA.

Since AINLIEF was a larger and superior body as compared to AILICSA which was one of its affiliates and it entered into the two agreements dated the 20th June, 1970 with the Corporation, AILICSA and its members are bound by them.

Point No 1 is decided against the AILICSA and all the Stenographers who have presented their applications before the Tribunal.

Coming to the next point regarding the maintainability of the various applications of the AILICSA and Stenographers, it follows as a corollary that if the two settlements are binding on the AILICSA and petitioner-Stenographers, the applications for hearing their case on merits are not maintainable. The main ground which was taken in the applications about their maintainability was based on the two orders of the Tribunal dated the 15th April, 1969 and the 22nd May, 1970. It has already been discussed above that after the greements, they are of no avail to the petitioners. On their basis, the AILICSA could ask for the indulgence of the Tribunal to hear its President in additional to AINLIEF's representative (but not in opposition to him) if the parties had not arrived at a settlement and the Tribunal were called upon to decide both the References on merits. Since the AINLIEF and the Corporation arrived at the settlements and the agreements made by them are binding on the AILICSA, the present applications are not maintainable.

It remains now to discuss the cases which have been cited by learned Counsel for AILICSA in this matter.

The earliest case cited by him is Rohtas Industries Limited vs. Brijnandan Pandey and others (1956 II LLJ 444). He has drawn the attention of the Tribunal to the following observations appearing therein:—

> "The discretion which an industrial tribunal has must be exercised in accordance with well-recognized principles. There is undoubtedly a distinction between commercial and industrial arbitration. As has been pointed out by Ludwig Teller (Labour Disputes and Collective Bargaining, Vol.I p. 536):
>
> 'Industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general the creation of new obligations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements.'
>
> A court of law proceeds on the footing that no power exists in the courts to make contracts for people; and the parties must make their own contracts. The courts reach their limit of power when they enforce contracts which the parties have made. An industrial tribunal is not so fettered and may create new obligations or modify contracts in the interests of industrial peace, to protect legitimate trade union activities and to prevent unfair practice or victimization. We cannot, however, accept the extreme position canvassed before us that an industrial tribunal can ignore altogether an existing agreement or (existing obligations for no rhyme or r ason whatsoever"

In that case the Labour Appellate Tribunal, Cacutta has dismissed an application filed by the Rohtas Industries Limited, Dalmianagar under section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 for permission to discharge temporary employees. An appeal against the said order was filed by the employer before the Supreme Court. It was contained before their Lordships on behalf of the employee-respondents that the finding of the Labour Appellate Tribunal on the question whether the respondents were temporary or permanent employees was a finding on fact and that the Court should not therefore interfere with it. It was pointed out by their Lordships that the Tribunal has given no finding on the question whether the respondents were temporary employees or not. Their Lordships were satisfied from the evidence that the respondents were temporary employees, that the appellate company had made a *prima facie* case for permission asked for and, therefore, they allowed the appeal and set aside the decision of the Appellate Tribunal. It was in the above context that the said observations on which stress is laid by learned Counsel in that judgment were made.

It need hardly be remarked that the above observations are useful for general guidance but they are of little avail to the Stenographers in the present case. In fact, the said observations have no bearing on the points involved in this case. While their Lordships observed that the Industrial Tribunal were not so fettered as the regular courts of law in the sphere of contracts, they did not accept the extreme proposition which was canvassed before them that an industrial tribunal can altogether ignore an existing agreement or existing obligations without any reason.

The next case referred by the learned Counsel is between Niemla Textile Finishing Mills, Ltd., and others and Second Punjab Tribunal and others (1957 I LLJ 460). He has referred in particular to the following observations made in the said case:—

> "The industrial courts are to adjudicate on the disputes between employers and their workmen, etc., and in the course of such adjudication they must determine the 'rights' and 'wrongs' of the claims made, and in so doing they are undoubtedly free to apply the principles of justice, equity and good conscience, keeping in view the further principle that their jurisdiction is invoked not for the enforcement of mere contractual rights but for preventing labour practices regarded as unfair and for restoring industrial peace on the basis of collective bargaining. The process does not cease to be judicial by reason of that elasticity or by reason of the application of the principles of justice, equity and good conscience."

In the above case it was contended before their Lordships of the Supreme Court, in the first instance, that the provisions of the Industrial Disputes Act were violative of the fundamental rights enshrined in Article 14 of the Constitution, since they left it open to the appropriate Government to differentiate between the parties similarly placed and circumstanced in every respect and in the absence of any rules, the appropriate Government had unregulated and arbitrary powers to discriminate between the parties. This contention was repelled by their Lordships. It was next contended that the Industrial Tribunal to whom industrial disputes were referred by the appropriate Government were legislating in the guise of adjudication and this amounted to the delegation of the powers of legislation which it was not competent for the Central legislature to do. This argument was also rejected by their Lordships and the said observations were in that context. They have no direct bearing on the facts and circumstances of the present case.

Learned Counsel has also referred to the case between the Associated Cement Companies Limited and Their Workmen (1960 I LLJ 491). In that case their Lordships of the Supreme Court were considering the scope of section 19(6) of the Industrial Disputes Act and whether it was open to a minority of workmen or a minority union to terminate the award. No question about the termination of award by a notice under section 19(6) of the Industrial Disputes Act is involved in the present case. Moreover, it may be pointed out that the legislature has in its wisdom, annulled the effect of the said decision by adding sub-section (7) in section 19 by the Industrial Disputes (Amendment) Act, 1964. Sub-section (7) now provides that no notice given under sub-section (2) or sub-section (6) of section 19 shall have effect unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be. It is, therefore, no longer open to a minority of workmen to terminate the settlement or award by giving a notice.

Reference has also been made to the case between Simpson and Company, Limited, Secunderabad and State of Andhra Pradesh and others (1960 I LLJ 611). The learned Counsel has, in particular, referred to the following observations made therein:—

> "It is well known and cardinal principle of judicial procedure that a party should be found to be in the wrong unless it had been heard and all reasonable opportunities within the confines of law have been granted to it."

There can be no two opinions regarding the said principle which is of a general nature. In that case the Labour Court had proceeded to declare the Company *ex-parte* and the validity of its order was challenged by a writ under Article 226 of the Constitution. It was found by the learned Judge of the Andhra Pradesh High Court that the order of the Labour Court in setting the Company *ex-parte* and purporting to proceed with the enquiry on that footing was wrong, and that Mr. Ramalinga Ayyar and Mr. Mascarenhas who had appeared before the Labour Court were perfectly entitled to appear and defend the Company as the former was a whole-time paid employee of the Company and the latter was the Manager of its Secunderabad Branch and they did not suffer from any disability. In the present case no order was ever passed against any party without hearing it or its representative and so the case cited is of no particular help to the petitioners.

The next case to which reference is made is, Coimbatore District Mill Workers' Union and Dhanalakshmi Mills, Ltd., Tiruppur, and others (1960 II LLJ 556). In

that case there was a dispute between the management of 32 mills in Coimbatore and the workmen employed therein in regard to the bonus payable for certain years. The State Government referred the dispute for adjudication to the Industrial Tribunal, Coimbatore. During the course of proceedings, three unions which were represented by the I.N.T.U.C. entered into an agreement with the management in respect of bonus for the years 1949 to 1952. The Tribunal passed an award in terms of the said agreement. The Coimbatore District Mill Workers' Union raised an objection before the Tribunal that it was not consulted by the management while entering into the compromise and, therefore, it was not bound by it. This objection was turned down by the Tribunal. On a writ application by the Coimbatore District Mill Workers' Union it was observed by the learned Judge of the Madras High Court that "a compromise by a few cannot, therefore, amount to a settlement of the dispute for a compromise can only bind those who are parties to it'. As already observed, the proposition that a settlement *de hors* conciliation proceedings is binding only on the parties to the settlement, is not disputed by the opposite side. This position or law is indisputable because of the clear provisions of section 18(1) of the Industrial Disputes Act. It may, however, be pointed out that in the said case it was found by the learned Judge that the Coimbatore District Mill Workers' Union had participated in the antecedent conciliation proceedings which culminated in the reference under section 10 of the Act; and that it had been taking active interest in the proceedings before the Tribunal; it had filed claims on behalf of the workers; and the Tribunal itself issued notice of the hearing to the petitioner. It was on account of these circumstances that the learned Judge observed that it could not be bound by the agreement to which it was never invited. In the present case, it has already been pointed out above that the AILICSA was represented by the AIRDIEF, that the latter was a party to the settlements, and, therefore, it follows that the AILICSA whom it represented and the members thereof were bound by the agreements.

The learned Counsel has next referred to the case between the Workers of Buckingham and Carnatic Company (by Binny and Buckingham and Carnatic Company Employees' Union and Madras Textile Workers' Union) and Commissioner of Labour and Chief Conciliation Officer and others (1964 I LLJ 253). In that case it was observed as follows:—

> "A trade union can and does only represent its members. When it enters into an agreement with the management, it can do so only on behalf of its members. Sub-section (1) to S. 18 is, as we said, intended merely to make it binding on the workers represented by it. There is nothing in the section to justify an extended meaning being given to it contrary to the ordinary law that a contract will bind only those that are parties to it. Likewise, S.18(3)(a) can refer only to the actual parties to the settlement or award. Thus S.18 makes a distinction between a case of settlement without the aid of the recognized official agency and one arrived at with the help of it or which is the result of an adjudication by a tribunal functioning under the Act. The former will bind only the parties thereto; the latter, all the workers whether parties or not. It follows that an agreement between one union and the management without recourse to conciliation proceedings will only bind the members of that union and not on all the workmen."

I have already made it clear that I am in respectful agreement with the said observations.

He has also referred to the case between Bihar Journals, Limited, Patna and Chaudhuri (H.K.) and another (1966 I LLJ 789) and relied on the following observation appearing therein:—

> "Apart from the modes of representation prescribed in Sub-sec. (1) or (2) of S.36 of the Act, the employer or the workman himself can certainly appear and conduct his case before the tribunal. Section 36 will be no bar to that. Every person has got a fundamental and substantial right to appear in person and conduct his case before a court or a tribunal. Denial of that right will be denial of fundamental justice. It is now well-settled and neither of the parties before us dispute that an employer as well as an employee between whom an industrial dispute has arisen and has been referred to the tribunal, can appear in person to conduct his case."

In that case, an objection was raised on behalf of the management before the Industrial Tribunal that the Vice-President of the workers union should not be

permitted to appear as he was a lawyer. That objection was turned down by the Tribunal on the ground that he was qualified to represent the union under section 36(1)(a) of the Act. A writ application was filed by the management to challenge that order. The learned Judges of the Patna High Court agreed with the Tribunal that the Vice-President of the workers' union was qualified to represent them. The other objection of the management was regarding the order of the Tribunal refusing one Shri A. K. Tiwari to represent the employer. It was urged that Shri Tiwari did not want to represent the employer under section 36 sub-section (2). It was in that context that the said observation was made. In the present case neither the employer nor any workman ever made a prayer that he wanted to appear personally in his own right. It may be pointed out that the observation appearing in the above passage to the effect that "every person has got a fundamental and substantial right to appear in person and conduct his case before a court" is unassailable but in case of an industrial tribunal this would be subject to the observations of their Lordships of the Supreme Court in the case between Ram Prasad Vishwakarma and Industrial Tribunal, Patna and other (1961 I LLJ 504). That case was not cited before the learned Judges. Moreover, the above remarks would not apply to the AILICSA because it is neither an employer nor a workman. It is a trade union which can appear as a representative only under Section 36(1)(a) of the Act.

Lastly, the learned Counsel referred to Tamilnad Electricity Workers' Federation vs. Madras State Electricity Board (AIR 1965 Madras 111). In that case the learned Judges considered the scope of sections 9A and 33(1) of the Industrial Disputes Act and observed "that section 9A was never designed to prevent the implementation of any change which is not a change imposed by the employer on the workmen but which is based upon the consent of the workmen to the offer by the employer upon the exercise of their judgment that the change was beneficial. Nor can we agree that section 33(1) would prohibit such a change even though it may be that a period of conciliation had been commenced." It was also observed that "the right of a free individual in this country who may be a workman to judge for himself as to an offer beneficial to him concerning his service conditions and to exercise his choice in terms of that offer cannot be taken away because a trade union to which he may not even belong as a member does not share his view." Their Lordships had to made that observation because the workmen had accepted certain terms offered by the employer and the trade unions had filed a writ application before the High Court against the Madras State Electricity Board to restrain it from implementing its proceedings insofar as those proceedings altered the service conditions of the workmen of the Board. It is obvious that it was a converse case and the observations made therein are of no relevance in the circumstances of the case before us.

Point No. 2 also is therefore decided against the AILICSA and the Stenographers who have presented the said applications before this Tribunal.

Now coming to the third point for determination set out above, it may be observed that in the normal course, the first two points having been decided against the AILICSA and the petitioner-Stenographers, it would not have been necessary to decide it, but I have heard the parties on the merits and I think it proper to decide the third point also, so that, in case there is an appeal against the Award and a different view is taken in deciding the appeal, regarding the maintainability of the said applications, the necessity of remanding the case may not arise and the relief, if any, to be given to the Stenographers may not be delayed. I have heard the parties on this point also to satisfy myself whether the agreement arrived at in respect of the pay-scales including Special Pay, span of scale and adjustment, is just and reasonable or it has resulted in such gross injustice to the Stenographers that it should arouse judicial conscience against it.

It is already noted above that the first grievance of AILICSA is about the pay-scale. It is averred that the earliest injustice was done to the Stenographers when the Government of India passed its Order No. 52(1) Ins.(1)(5), dated the 1st June, 1957, which is known as the Standardization Order. I have carefully gone through that Order and it shows that a cadre of Higher Grade Assistants was created by that Order for the first time and a scale of Rs. 140—410 was prescribed for them, but at the same time, the cadre of Assistants was also retained and two scales of Rs. 75—300 and Rs. 75—270 were prescribed, the first for the employees confirmed before 31st August 1956 and the next for employees confirmed after 31st August 1956. It further appears from para 4 of that Order that Shorthand Typists were also ordered to be graded as Stenographers if they possessed the requisite qualifications of a Stenographer. Thus, in fact, Shorthand Typists who possessed requisite qualifications were given better treatment than before. Two

scales were prescribed in the cadre of Stenographers one of Rs. 90—300 for employees confirmed before 31—8—1956 and the other of Rs. 90—270 for employees confirmed after 31—8—1956. It does not appear from the perusal of this Order that the allegation of the petitioner-Stenographers to the effect that all those who were Assistants before this Order were thereby upgraded as Higher Grade Assistants is correct. On the contrary, it appears from what was laid down in para 4 of the Order regarding the categorisation of employees, that all Assistants were not to be promoted even as Section Heads which was a lower category than that of Higher Grade Assistants. It was laid down that only those employees who were in supervisory posts would be fitted as Section Heads to the extent of the number of posts available, on the basis of a selection by taking into account salary, experience in supervisory capacity and qualifications of every such employee. If, even the Assistants who were working in a supervisory capacity were not all upgraded as Section Heads, it cannot be believed in the absence of any evidence on that point that all the Assistants were upgraded as Higher Grade Assistants. It further appears that although Special Pay was not allowed to all the Stenographers by this Order, a Special Pay of Rs. 30, Rs. 40, and Rs. 50 p.m. was prescribed for those who were selected to work with senior officers like Deputy Zonal Managers, Zonal Managers, Directors and the Chairman. It is thus difficult to hold that injustice was done to the Stenographers by this Order.

Their next grievance is about the settlement of 1963. The perusal of that settlement shows that the grades of Assistants, Stenographers and Higher Grade Assistants were revised and laid down as follows:—

Assistants	Rs. 130-5-155-6-167-8-207-10-257-12-281-E. B.-12-305-15-350-20-370.	(25 years)
Stenographers	Rs. 145-10-215-12-275-E.B.-15-350-20-370.	(18 years)
Higher Grade Assistants . . .	Rs. 190-10-260-E.B.-15-440-20-480.	(21 years)

Again, it appears that Stenographers were given better scale as compared to Assistants because they were to get a higher start and were to reach the maximum of the grade only after 18 years while the Assistnts were to take 25 years to reach the maximum.

In the Memorandum of Settlement dated the 20th June 1970, the scales prescribed are as follows:—

Assistants	Rs. 170-7-177-8-209-10-269-12-305-15-380-E.B. - 20-500.	(25 years)
Stenographers	Rs. 196-12-220-15-325- 20-385- E.B. -20-545.	(20 years)
Higher Grade Assistants . . .	Rs. 245-15-320-20-360-E.B.-20-600-25-650.	(21 years)

It is obvious that the scale of Stenographers is far better than that of Assistants because they have been given a start of Rs. 196 as against Rs. 170 allowed to the Assistants and they can reach the maximum of Rs. 545 while the Assistants stop at Rs. 500. Moreover, the Stenographers reach their maximum of Rs. 545 in 20 years while the Assistants will take 25 years to reach even the maximum of Rs. 500. While the Assistants have been allowed over the existing scale an increase of Rs. 40 in the minimum and Rs. 130 in the maximum of the revised scale, the Stenographers have been allowed an increase of Rs. 51 at the minimum and Rs. 175 at the maximum of their scale. It cannot, therefore, be said that the Assistants, including the Typists who are placed in that scale, and whose instance is particularly cited by them, have received a beter deal than the Stenographers.

It is also pointed out in the applications filed by the Stenographers, that the Stenographers in the employ of the Central Government are placed in the scale of Rs. 210—530 and the Stenographers in the employ of the Corporation have been given only a scale of Rs. 196—545 and thus, they have not been brought upto the level of the Stenographers of the Central Government. It may be observed that the petitioner-Stenographers and AILICSA ought to have compared their revised scale with Stenographers in comparable concerns like big companies dealing with

general insurance. It was not quite appropriate to compare them with Stenographers in the employ of the Central Government. Even then, it may be pointed out that there is not one scale of Stenographers in the employ of the Central Government. There are four grades of Stenographers in the Central Secretariat Stenographers Service *viz.*, Grade III, Grade II, Grade I and Selection Grade. No direct recruitment is made in Grade I and Selection Grade. Grade III carries a scale of Rs. 130—280, which is much lower than the revised scale of the Stenographers given in the agreement. Grade II carries a scale of Rs. 210—530. In this grade the Stenographers get a little higher start than the Stenographers in the service of the Corporation, but the maximum of the scale is again lower as compared to the revised scale of the Stenographers in the service of the Corporation. Moreover, if the Special Pay of Rs. 20 be added to the scale it comes to Rs. 210—565. There is no Special Pay provided for Stenographers Grade II in the service of the Central Government. Thus, the revised scale of the Stenographers of the Corporation laid down in the agreement is dennitely higher than the scale of the Stenographers Grade II in the service of the Central Government. It has also to be borne in mind that Stenographers Grade II in the service of the Central Government are employees of Class II (non-gazetted) and not of Class III as in the case of the Corporation. As regards Grade I and Selection Grade in the service of the Central Government, they are promotion posts corresponding to the promotion scale which is allowed to the Stenographers in the Corporation in the cadre of Higher Grade Assistants. Thus, the argument to the effect that the revised scale given to the Stenographers in the agreement is not better than the scale of Stenographers Grade II of the Central Government is not correct. Moreover, according to te revised formula of Dearness Allowance in the agreement of the 20th June, 1970 the rate of neutralization is 75 per cent in the case of Class III employees on the base-year 1960. It is also provided that on quarterly basis of 4 points rise or fall there would be a revision of Dearness Allowance. The proper course for the petitioners was to combine the basic pay, Special Pay, and Dearness Allowance and then compare their total emoluments with the total emoluments available to Stenographers in comparable concerns. They have not put up their case in that light even though enough opportunity was available to them.

The Stenographers' real grievance is that they should have been given the same scale as has been laid down for the Higher Grade Assistants. I do not find any force in this argument because the cadre of Higher Grade Assistants was a higher cadre ever since it was created by the Standardization Order and it continues to remain so in the Memorandum of Settlement of the 20th June, 1970. It does appear to be essentially a promotion grade as urged by the learned Counsel for the Corporation. It was urged by the learned Counsel for the AILICSA that direct recruitment is also made to the cadre of Higher Grade Assistants. It is true that direct recruitment to this cadre is also possible under Clause (9) of the Recruitment Procedure given in the Life Insurance Corporation Establishment Manual, but it lays down that "Direct recruitment to this cadre will be under taken only with the prior sanction of the Staff Committee and subject to such conditions as that Committee may prescribe". It is clear that direct recruitment is not the rule but an exception which may be availed of, only in certain circumstances. It further appears that in the Promotion Procedure laid down in the same Manual it is provided as follows:—

> "*Promotion to the cadre of H.G.A.S.*—Selection for promotions to this cadre shall be made only from among employees who have passed the following examinations:
>
> (a) Associateship Examination of the Federation of Insurance Institutes.
>
> (b) Associateship Examination of the Chartered Insurance Institute.
>
> (c) Intermediate Examination of the Institute of Chartered Accountants.
>
> (d) Three subjects of the Examination of the Institute of Actuaries."

It is clear from the above provision that it is certainly a promotion cadre and only those persons who have acquired the necessary qualifications after passing the prescribed examinations are eligible. Promotion to this post is open to all eligible employees including the Stenographers. It was submited by the learned Counsel for the Corporation that about 100 Stenographers who acquired the above-noted qualifications were promoted to the cadre of Higher Grade Assistants and they are working as regular Higher Grade Assistants in different technical spheres. It was also submitted by him and admitted by the representatives of the AILICSA at the time of arguments, that besides the above complement about 98 Stenographers were selected and promoted only on the basis of their experience and were receiving the scale laid down for the Higher Grade Assistants. Although they are working as

Stenographers, they are placed in the scale of Higher Grade Assistants and receiving higher salary. This grade is thus open to the Stenographers who acquire higher qualifications and pass prescribed examinations necessary for the purpose. Besides that quite a good pecentage of them is promoted and given that scale even on the basis of seniority and experience. As already noted above, there is considerable improvement in the scale laid down for the Stenographers in the Memorandum of Settlement. The parties to the settlement have given them a fair deal. The AILICSA has not been able to make out a good case for giving the scale of Higher Grade Assistants to all the Stenographers.

Now, coming to the question of Special Pay, the main grievance raised by the Stenographers in their applications was that while the Functional Allowance allowed to the Typists was raised from Rs. 15 p.m. to Rs. 25 p.m., their Special Pay was increased from Rs. 10 to Rs. 20 p.m. only. According to them, their Special Pay should also have been fixed at Rs. 25 p.m. It has to be borne in mind that the Functional Allowance allowed to the Typists does not carry with it Dearness Allowance and other benefits of Gratuity, Bonus, etc. That is why it was fixed at Rs. 15 p.m. as compared to Special Pay of Rs. 10 p.m. for the Stenographers even before it was revised in the Memorandum of Settlement. In the Memorandum of Settlement a raise of Rs. 10 was given to Typists in Functional Allowance and a similar raise of Rs. 10 was given to the Stenographers in the Special Pay. No greater favour was shown to the Typists as compared to the Stenographers. It was pointed out by the Corporation's learned Counsel that the Special Pay of Rs. 20 allowed to the Stenographers after including the benefits of Dearness Allowance and other benefits of Bonus and Gratuity, actually comes to Rs. 36 p.m. There is, thus, no good ground for a grievance on this score as well.

It was also urged on behalf of the AILICSA that the Cashiers have been allowed Special Pay of Rs. 25 p.m. in the revised scale and there was no reason for not giving the same Special Pay to Stenographers. It may be observed that the Cashiers were already receiving a Functional Allowance of Rs. 15 p.m. and in their case also there is an increase of Rs. 10 p.m. only. It is true that their Functional Allowance has been altered into Special Pay and, therefore, they would now be able to earn thereon Dearness Allowance also, but the Cashiers are a class by themselves and the duty which they have to perform involves considerable risk. It is not a category which may be compared with any degree of fairness with that of Stenographers. Moreover, it may be noted that a further raise of Rs. 10 to Rs. 15 has been given in the Special Pay to those Stenographers who would be attached to senior officers. Instead of Rs. 20, Rs. 30, Rs. 40 and Rs. 50 p.m. it has been raised now to Rs. 30, Rs. 40, Rs. 55 and Rs. 65 p.m: After adding proportionate Dearness Allowance, Bonus and Provident Fund contribution to these amounts, it cannot be denied that a substantial benefit will be available to eligible employees. It was submitted on behalf of AILICSA that the Special Pay above Rs. 20 p.m. is only on paper and is not given to the Stenographers. It may be observed, that the Corporation is bound to implement the agreement, and if any part thereof is not implemented, it is open to the concerned employees to take proper legal steps about its enforcement. The Special Pay as revised in the agreement for the Stenographers cannot be said to be unreasonable.

At the time of final arguments it was lastly contended by learned Counsel for AILICSA that when the office-bearers of this Association met the Chairman of the Corporation he had offered to increase the Special Pay from Rs. 20 to Rs. 25 but with regard to other improvements over and above the conditions provided in the settlement he promised to consider them only if there was no opposition from the four Associations who are parties to the settlement. He tried to refer to the affidavit of Shri K. L. Chawla on this point. This argument was strongly opposed by learned Counsel for the Corporation and also by the representatives of AIIEA and AILIEA. It was urged by them that a new question of fact should not be allowed to be raised, that the copies of Shri Chawla's affidavit were not supplied to them and it should not be taken into consideration as it was produced at the last stage of hearing. I find that it was not averred by AILICSA and the Stenographers in their applications before the Tribunal that the Chairman had offered to increase the Special Pay of Stenographers by Rs. 5. It is denied by the Corporation that the Chairman had agreed to raise the Special Pay to Rs. 25 or to any other sum as alleged by Shri Chawla. It is also emphatically denied by the Corporation that the Chairman had agreed to consider the conditions or demands outside the settlement dated the 20th June 1970 if the four Unions did not oppose such consideration by the Chairman It may be observed that a fresh plea involving a new question of fact cannot be allowed to be raised at the time

of final arguments. Moreover, Shri Chawla is not a disinterested person. In the absence of any documentary evidence or independent oral testimony, no reliance can be placed on mere oral assertion and no relief can be allowed on that basis. The said argument is, therefore, rejected.

As regards the span of their scale, it was vehemently urged on behalf of the Stenographers that it extended only over 18 years ever since the Standardisation Order was passed and it has been increased to 20 years in the Memorandum of Settlement and this has put them to a definite disadvantage. The reply given from the other side is, that since the maximum of the scale was raised to Rs. 545 the span had to be extended by two years. If the span of 18 years were retained in the revised scale, it would have necessitated a higher rate of annual increments. It would appear that even in the revised scales of Section Heads and Higher Grade Assistants the annual increment is only Rs. 20 after they reach Rs. 325 and Rs. 320 and till they reach Rs. 585 and Rs. 600 respectively. The Stenographers have also been allowed the same annual increment of Rs. 20 after they reach Rs. 325 and till they reach the maximum of Rs. 545. When they were in a scale lower than that of the Section Heads and Higher Grade Assistants they could not legitimately expect higher annual increment. It is also urged that in the case of Record Clerks the previous span was 28 years and it has been reduced by one year and kept at 25 years. In the case of Stenographers alone it has been increased by 2 years. It would suffice to observe that if Record Clerks have been fairly treated, the Stenographers cannot make a legitimate grievance out of it. Their span is still 5 years less than that of the Assistants and even one year less than that of the Higher Grade Assistants and Section Heads. The normal expectation of the period of service in the case of Class III and Class IV employees of the Corporation is 35 years and, therefore, the increase of span from 18 to 20 years is not unreasonable. It is common knowledge that one tends to get stagnated if he reaches the peak of his scale too early and there is no scope for increments for a number of years. Looked at from that view point also, the increase of span from 18 to 20 years is not unjust.

Lastly, coming to the question of the method of fixation in the new scales, it is obvious that a uniform procedure has been laid down for all Class III employees other than the Section heads. It is provided that "the basic pay as on 31st March 1969 in the existing scales of pay will be increased by 28 per cent" and then "with reference to the basic pay thus arrived at fixation in the new scales will be done at a stage which is equal to the amount of basic pay determined as above and if there is no such stage at the next higher stage". This formula applies to Assistants, Stenographers and Higher Grade Assistants equally. Since the span of the scale of Stenographers was extended from 18 years to 20 years, the pay of the Stenographers who had reached the maximum could not be fixed one stage lower than the maximum of the revised scale. Stenographers who had earned only 18 increments could not be treated as if they had earned twenty increments. If that were done, they would have received disproportionately higher increments which would have created heart-burning amongst employees of other categories. It, thus, appears that those who represented the Stenographers were not wanting in their effort to obtain for them substantial relief in the same proportion, rather in a way little better than what was allowed to employees in other categories.

It was alleged in the applications that as there are very few employees in the category of Stenographers, that is, only 781 out of the total number of 41,000 Class III and Class IV staff, their legitimate demands have been ignored. This allegation does not seem to be a fair one. It cannot be gainsaid that although the Stenographers were asking for a better deal ever since they formed a new Association, their efforts always proved abortive and they were unable to achieve any success. This is apparent from the perusal of their own application which they had presented before the Tribunal for being impleaded as a party. Their request even for holding formal conciliation proceedings did not meet with any success. It should be appreciated by the Stenographers that it was only because of the backing of the vast number of other employees and because their case was taken up by the AINLIEF and the other two Associations that they were able to raise industrial disputes and persuade the Government to refer them to the Tribunal. Again, it was on account of the serious efforts made by the officers of the AIIEA, AILIEA, AINLIEF and the LIC HGAA that the Corporation was prevailed upon to concede better terms and conditions of service embodied in the two Memorandums of Settlements. It is extremely doubtful if the AILICSA, left to itself, and without the support of the other Unions, would have been able to achieve better success. At any rate, the case put forward by the Stenographers, even on merits,

is not strong enough to persuade the Tribunal to interfere with the settlements, and their applications are fit to be rejected

As urged by the Stenographers, it is true that the benefits which they have received under the settlement of the 20th June, 1970 fall short of the claim which was raised in the Charter of Demands, but this grievance is not particular to their category alone. The demands were pitched very high and they were very stoutly opposed by the Corporation. It is no mean achievement which the AIIEA, AINLIEF, AILIEA and LIC HGAA have beeen able to bring about for them by the settlements. I do not mean to say that the optimum has been reached in the scale of Stenographers, but ideal conditions of service cannot be attained all at once. I may repeat that their Lordships of the Supreme Court observed in another connection in All India Reserve Bank Employees Association *versus* the Reserve Bank of India (1965 II LIJ 175), that the ideal "has eluded our efforts like an ever-receding horizon and will so remain for some time to come".

The applications filed by the AILICSA and the Stenographers are hereby dismissed. Application No. Misc./NIT/39/70 is allowed. Since it has been held by the Tribunal that the two Settlements dated the 20th June, 1970 embodied in the earlier Award are binding on the members of AILICSA and all other Stenographers, I hereby give a composite consent Award in respect of the Stenographers in both the References in terms of the said settlements. This would apply to all the Stenographers of the Corporation including those who are in the Higher Grade Assistants' scale.

This Award, when it comes into operation, would supersede the Interim Award dated the 23rd June, 1969 in respect of Stenographers also, in the manner indicated in the earlier Award of the 13th July, 1970.

In the circumstances of the case, the parties are left to bear their own costs.

(Sd.) D. S. DAVE,

Presiding Officer,

National Industrial Tribunal.

NEW DELHI,

Dated, September 26, 1970.

[No. 40/36/70/LRI.]

S. S. SAHASRANAMAN, Under Secy.

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